IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 646 of 2000

For Approval and Signature:

HONOURABLE MR.JUSTICE A.L.DAVE
HONOURABLE MR.JUSTICE SHARAD D.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KOLI BHIKHA LAXMAN CHUDASAMA - Appellant(s)
Versus
STATE OF GUJARAT & 1 - Opponent(s)

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Appearance :
MR ANIL C THAKORE for Appellant(s) : 1,
MR AJ DESAI, APP for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE A.L.DAVE

and

HONOURABLE MR.JUSTICE SHARAD D.DAVE

Date : 12/07/2007

ORAL JUDGMENT
(Per : HONOURABLE MR.JUSTICE A.L.DAVE)

The appellant came to be tried and convicted by Sessions Court, Junagadh, Camping at Veraval for the offence of murder of his wife Savitaben allegedly committed by him by inflicting an axe blow on her head on 16th June, 1997 at about 10.00 a.m. at the parental house of the deceased situated at Jhunjharpur, Chorwad. The judgment was rendered on 21st March, 2000 in Sessions Case No.304 of 1999.

2. The prosecution case, in brief, is that the appellant and deceased Savita were married in recent past of the date of incident. On the day of incident, the deceased had gone to her parental house and was resting on a cot at about 10.00 a.m. Near the cot, her sister Benaben was cleaning vessels and her brother Sudhir was playing around. At that time, the appellant went to the house of his in-laws. He made a demand of Rs.100/- from his wife which she declined to give saying that she did not have money. The appellant went out of the house, went to the rear side, found an axe, came back and inflicted axe blow on the head of the deceased. The axe fell on fronto-parietal region resulting into fracture of the skull and internal haemorrhage. The deceased was taken to the doctor who referred her to a better hospital. Ultimately, she was taken to Rajkot where she succumbed to the injury. F.I.R. in respect of the incident was lodged by one Hareshbhai Rajabhai Koli Dabhi before Veraval City Police Station. He is the brother-in-law of the deceased i.e. sister's husband of the deceased. On basis of the F.I.R., offence was

registered, case investigated and ultimately chargesheet came to be filed in the Court of JMFC, Maliya Hatina who committed the case to the Court of Sessions and Sessions Case No.304 of 1999 came to be registered. Charge was framed against the accused at Exh.1 to which he pleaded not guilty and came to be tried. The Sessions Court, after considering the evidence led before it, came to the conclusion that the prosecution was successful in establishing charges against the accused – appellant and recorded conviction for the offence of murder and sentenced him to undergo imprisonment for life. The Sessions Court also found that offence punishable under Section 135 of Bombay Police Act was also proved and recorded conviction thereunder but did not award any separate sentence therefor.

3. We have heard learned advocate Mr. Anil Thakore for the appellant and learned APP Mr. Desai for the State. We have examined the record and proceedings in light of the contentions raised before us by rival sides.

4. Learned advocate Mr. Thakore tried to convince us that facts of the case would attract Section 304 of I.P.C. rather than Section 302 of I.P.C. He submitted that the appellant is in jail for nearly 10 years and the appeal, therefore, may be appropriately allowed.

5. The appeal is opposed to by learned APP Mr.

Desai. It was submitted that there is no material to attract any of the exceptions to Section 300 of I.P.C. to make the case fall under Section 304 of I.P.C. rather than Section 302 of I.P.C. He submitted that the appeal, therefore, may be dismissed.

6. Dr. Gokaldas Manjibhai Kansaagra is examined at Exh.13. The deceased was taken to him at the Chorwad Government Dispensary around 11.30 a.m. He gave preliminary treatment and then referred her to a better hospital. He has, in his deposition (Exh.13), indicated that the wound was 3″ x ½″ x bone deep on the fronto-parietal region, obliquely situated and that it was bleeding. According to him, the injury was possible with Muddamal article No.2 - axe.

6.1 Dr. Premji Devji Movaliya is examined at Exh.15. He was Medical Officer at Veraval Municipal Hospital and had examined Savitaben brought to him with a reference note. She was referred to Gondhiya Hospital at Rajkot.

6.2 Dr. Jentilal Harjivandas Karia is examined at Exh.17. He also describes the injury and states that the injuries were possible with Muddamal axe, that the injury was sufficient in ordinary course of nature to cause death. During cross-examination, he states that even if immediate proper medical treatment was given, the deceased could not have survived. The post-mortem notes are at Exh.18 which

correspond to the oral medical evidence. There is a specific opinion that the cause of death was result of coma and cardiac-respiratory failure as a result of injury to brain. The medical evidence, therefore, clearly indicates that the injury was possible with an axe which was sufficient in ordinary course of nature to cause death. It was caused on a vital part of the body with a deadly weapon like axe. The injuries could not have been accidental or suicidal. Necessarily, therefore, the death of the deceased was homicidal.

7. Now coming to the evidence in respect of the accusation against the appellant – accused, there is evidence of Benaben Ramjibhai, aged 17 at Exh.21 and Sudhir Ramjibhai, aged 14 at Exh.22. Both these are minor witnesses. They, in terms, say that when the incident occurred, deceased Savita was taking rest on a cot. Around 10.00 a.m., their brother-in-law (the accused) came and demanded Rs.100/- from their sister Savita. Savita told him that she does not have money. The brother-in-law, therefore, took a round of the house and brought an axe from the rear portion of the house and inflicted an axe blow on the head of the deceased. Thereafter, the accused – appellant escaped. The witnesses say that they tried to stop the bleeding by trying to gag the wound with the help of a bushirt but in vain. The witnesses have been cross-examined but they stick to their version and nothing emerges in the deposition of either of the witnesses to show that any of the exception to

Section 300 would be attracted nor is their anything to show that any of the general exception is attracted.

8. The depositions of the eye-witnesses have come so naturally and their presence is also so natural at the place of incident that their depositions cannot be doubted. In the result, we are of the view that the Trial Court was justified in coming to the conclusion that the accused – appellant caused the fatal injury to the deceased.

9. It was mainly and vehemently contended that the case would not fall within the definition of murder but would fall in the category of culpable homicide not amounting to murder. We have closely scrutinised the evidence of the two eye-witnesses Benaben Ramjibhai and Sudhir. We do not find any of the ingredients of any of the exceptions to Section 300. It was feebly contended that the incident had occurred without pre-meditation and that there is only a single blow. We are afraid, these two factors, by themselves, would not attract any of the exceptions to Section 300. Apart from the above aspects, it cannot be overlooked that the deceased did not offer any reason to the appellant for behaving in the manner he behaved. The appellant only on account of refusal to pay Rs.100/- by the deceased finds out an axe and inflicts injury on vital part of the body namely, head with an axe which resulted into her death. The blow has caused

fracture of the skull and internal haemorrhage in the brain and as doctor has said that even if treatment was given, the deceased could not have survived. These factors collectively would mean that the appellant took up a deadly weapon like an axe, on refusal to pay money, used that deadly weapon with sharp-edged portion of it and caused injury on fronto-parietal region. All these factors would leave no scope for drawing any other conclusion. In our view, therefore, the contention that the case would fall within the definition of culpable homicide not amounting to murder cannot be accepted.

10. We notice that the notification of the Collector under the Bombay Police Act is at Exh.12 and, therefore, the conviction of the appellant under Section 135 of the Bombay Police Act is just, legal and proper.

11. For the foregoing reasons, we do not find any reason to interfere with the judgment and order impugned herein, in exercise of appellate jurisdiction. The appeal, therefore, must fail and is dismissed. The judgment and order dated 21st March, 2000 rendered by learned Additional Sessions Judge, Veraval in Sessions Case No.304 of 1999 stands confirmed.

(A.L. Dave, J.)

(Sharad D. Dave, J.)

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